

UNITED STATES OF AMERICA NATIONAL
LABOR RELATIONS BOARD REGION 13

STARBUCKS CORPORATION,)	
)	
Employer,)	
)	13-RC-288328
and.)	13-RC-288667
)	13-RC-288994
CHICAGO & MIDWEST REGIONAL)	
JOINT BOARD, WORKERS)	
UNITED/SEIU,)	
)	
Petitioner.)	

Petitioner's Post-Hearing Brief

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INTRODUCTION

The Petitioner seeks elections in single units at the Employer's Chicago stores at Randolph and Wabash ("Wabash Store"), Logan and California ("Logan Store"), and 55th and Woodlawn ("Woodlawn Store") (collectively, "Chicago stores"). The Employer argues that the only appropriate units include all stores in Districts 303 (Wabash Store), 983 (Woodlawn Store), and 3113 (Logan Store). The Employer has failed to meet its "heavy burden" of rebutting the presumption that the single store units are appropriate.

THE CHICAGO CASES ARE NO DIFFERENT THAN "MESA I"

The Region directed the "parties" to address whether the Chicago stores are different than *Starbucks Corp.*, Case No. 28-RC-286556, Decision and Direction of Election ("Mesa I") (Jan. 7, 2022), *request for review denied*, *Starbucks Corp.*, 371 NLRB No. 71 (February 23, 2022), and, if so, how. Tr. 710. *Mesa I* found that the Employer had not met its "heavy burden of overcoming" the single-store presumption. *Mesa I* at 11. The Petitioner respectfully submits that it is the *Employer's* burden to show not only that the Chicago cases are different than *Mesa I* in some meaningful way, but also that the Chicago cases are *so* different that a different outcome is warranted. The Employer cannot possibly meet that "heavy burden" here.

Notwithstanding the burden of proof, in the interest of completeness, the Petitioner provides the following comparison of the factual findings and analysis in *Mesa I* to the facts here to show just how similar the Chicago cases are to *Mesa I*.¹

¹ After the close of the hearing here, the Regional Director in Region 28 issued a second decision, which applies *Mesa I* considering some additional evidence. *Starbucks Corp.*, 28-RC-289033, Decision and Direction of Election (February 18, 2022) ("Mesa II"). Also, after the close of the hearing, the Regional Directors in Regions 19 and 10 issued decisions in two more cases. *Starbucks Corp.*, 19-RC-287954, Decision and Direction of Election (February 18, 2022) ("Seattle"); 10-RC-288098 (February 24, 2022) ("Knoxville"). The Chicago cases are *not* different from *Mesa II*, *Seattle*, or *Knoxville* in any meaningful way, but do involve elements not explicitly discussed in *Mesa I*, so these cases are also addressed where relevant. The Chicago cases are *not* different in any meaningful way from older cases where the Board found Starbucks did not rebut the presumption. See Decision and Direction of Elections, *Starbucks*

A. Centralized National Operations Do Not Overcome the Appropriateness of Single-Store Unit

Mesa I found that the Employer “operates a highly centralized national retail chain operation . . . executing a standardized customer experience across its locations [and] it relies heavily on its centralized operating procedures, including distribution channels, store design, and product offerings, placement, marketing, and promotions, as evidence of functional integration.”

Mesa I at 12. *See also Mesa I* at 3.

The Chicago cases involve the same facts on national centralization as in *Mesa I*, because *Mesa I* incorporated the evidence on national centralization from *Buffalo I* (see *Mesa I* at 2 n. 4), and this record incorporates the very same evidence from both *Buffalo I* and *Mesa I* (Board Exh. 2 at 6-7).

Nevertheless, as *Mesa I* observed:

[I]t “is common in retail chain operations, and particularly in food chains, [for there to be] a considerable degree of centralized administration in the functioning of . . . stores.” *Angeli’s Super Valu*, 197 NLRB 85, 85 (1972). It has noted that, “though chainwide uniformity may be advantageous to the employer administratively, it is not a sufficient reason in itself for denying the right of a separate, homogeneous group of employees, possessing a clear community of interest, to express their wishes concerning collective representation.” *Haag Drug*, 169 NLRB 877, 877 (1968).

Mesa I at 12.²

And as *Mesa II* observed, while the Employer “has a single core model for its stores, districts, and geographic pods, which is replicated with decisiveness and precision throughout its business,” such “uniformity in store operations . . . is insufficient to provide a basis for rebutting the presumption that the single-facility unit [] is appropriate.” *Mesa II* at 6.

Corp., Case Nos. 03-RC-282115, 03-RC-282127, 03-RC-282139 consol. (“*Buffalo I*”) (Oct. 28, 2021); Decision and Direction of Elections, *Starbucks Corp.*, Case Nos. 03-RC-285929, 03-RC-285986, 03-RC-285989, consol. (“*Buffalo II*”) (Jan. 14, 2022).

² See also *Buffalo II* at 21-22.

Thus, as in *Mesa I*, the centralized operations here do not overcome the single-store presumption.

B. There is Local Autonomy in Control Over Daily Operations and Labor Relations

1. Store Managers Supervise and Control Day-to-Day Store Operations

Mesa I found that store managers manage are responsible for the day-to-day operations at each individual store, that they exercise discretion over many daily operational and labor relations matters, and that these operational and labor relations matters demonstrated “significant autonomy” at the local level notwithstanding centralized policies and procedures. *Mesa I* at 4, 13-14.³

The same is true here. The Employer’s store manager job description outlines the central role and authority of store managers to supervise and manage employees and store operations:

The store manager is required to regularly and customarily exercise discretion in managing the overall operation of the store. In particular, a majority of time is spent supervising and directing the workforce, making staffing decisions (i.e., hiring, training, evaluating, disciplining, discharging, staffing and scheduling), ensuring customer satisfaction and product quality, managing the store's financial performance, and managing safety and security within the store.

Pet Ex. 13.

By contrast, the district manager job description emphasizes district managers’ relationship with store managers *not* with hourly baristas and shift supervisors or individual store operations:

This job contributes to Starbucks success by leading a team of store managers within an assigned district to achieve business results while creating and maintaining the Starbucks Experience for our customers and partners. The district manager is required to regularly and customarily exercise discretion in managing the overall operation of the stores within the assigned district. The majority of time is spent staffing, coaching, developing and managing the performance of store managers, understanding local customer needs, ensuring district-wide customer satisfaction and product quality, analyzing key business indicators and trends,

³ *Mesa I* noted that store managers may be assigned to handle multiple stores for temporary periods of time. *Mesa I* at 4. There is evidence that the same has occurred in the three districts involved here. But, as in *Mesa I*, that factor is not significant to the analysis.

managing the district's financial performance, and managing safety and security within the district. The incumbent is responsible for modeling and acting in accordance with Starbucks guiding principles.

Pet. Ex. 11.

Other Employer policies also provide ample ground for finding that store manager exercise sufficient control over day-to-day labor relations to prevent the Employer from rebutting the single-store presumption. The Employer's Partner Guide describes the store manager's role as follows:

Store manager: The store manager is ultimately in charge of all store operations and directs the work of the assistant store manager(s), shift managers (where applicable), shift supervisors and baristas. The store manager is responsible for personnel decisions, scheduling, payroll and fiscal decisions. A store manager is considered full-time and is generally scheduled to work at least 40 hours each week.

Er. Ex. 13 at 15.

Various corporate officials also confirmed store managers' responsibility for and management of the day-to-day operations at *all* stores around the country. *Buffalo I* Tr. 76, 99, 124, 127, 128, 130-31, 145, 147-49, 152, 210, 232, 237, 242, 315, 261, 275, 279-83, 308-309, 310, 312-13, 317-18, 319-20, 332, 341, 345, 363, 372, 374-75, 389.

Store managers Annie Wong and Brittany Harrison confirmed their responsibility for and management of the day-to-day operations of *their* stores. *Mesa I* Tr. 364-69, 372, 377-79, 386-87, 390-91; Case 27-RC-288318 ("Superior") Tr. 34-36, 43, 50, 52-53, 63-66, 77-82, 92-93. Baristas and shift supervisors from other stores corroborate this testimony regarding the key role of store managers in managing and overseeing the day-to-day operations at *their* respective stores. *See Buffalo I* Tr. 499-732.

Chicago District Managers Shawn Gancarz (District 303), Ash Kolodidziej (District 3113) and Akeisha Walker (District 983) similarly testified that store managers have responsibility for and manage the day-to-day operations of all stores in their districts. Tr. 76-77, 132, 269, 328, 395.

For example, in District 303, the District Manager created a document (Chicago Er. Exh. 4) based on the corporate-wide “Store Manager Approach,” which outlines the duties and responsibilities of *all* store managers nationwide, that store managers can use to track the various responsibilities assigned to them. Chicago Er. Exh. 4. That Employer exhibit highlights the *store manager’s* responsibility for a multitude of day-to-day store operations, such as cash management, scheduling, developing assistant store managers (if any), ensuring proper entry of data into the POS system, processing payroll, and coaching partners on Chicago Fair Workweek Ordinance protocols. Tr. 48-49, 114-15, 116, 117, 121-22, 126, 127-28, 130-31, 132.

There is evidence that District 3113 employs a similar “checklist,” which is applicable throughout the Midwest, to aide store managers in running the store in conformity with corporate policies. Tr. 217. While the district manager may go over the checklist with store managers (Tr. 217), this list is primarily used by store personnel to aide in carrying out *their* functions and, ultimately, the store manager is responsible for ensuring that her store complies with corporate policies and protocols and seeing that partners under her charge carryout those functions on the checklist (Tr. 269, 270-74).

Chicago employees Brick Zurek (Wabash store), Maria Fantozzi (Logan store), and Jasper Booth-Hodges (Woodlawn store) further confirmed their store managers’ responsibility for and management of the day-to-day operations of each petitioned-for store. Tr. 501-02, 580, 643.

Thus, as in *Mesa I*, there is no doubt that the Chicago store managers are responsible for the day-to-day operations at each individual store.

a. Store Managers Are Responsible for Store Performance

With regard to store operations and business performance, generally, the District Managers of Districts 303, 983, and 3113, while describing their role in overseeing store managers, admitted that store managers are ultimately responsible for creating the business plans for their individuals

stores and are responsible, and held accountable, for their individual store performance. Tr. 141-42, 367, 412-13; *Buffalo I* Tr. 210. Store managers must make adjustments to store operations on a day-to-day basis to try to meet the goals they established in their business plans. Tr. 413. Store managers are similarly responsible for ensuring that periodic, special promotions and products are rolled out properly by store partners. Tr. 141, 337, 414.

b. Store Managers Adjust Inventory

The store manager and shift supervisors at the individual stores are also responsible for maintaining and ordering the store's inventory, including supplies and merchandise. Tr. 143, 283, 409, 529; *Superior* Tr. 79. Those inventory orders may be guided by corporate computer-generated benchmarks but the stores can, and do, vary from those benchmarks based on their own judgment of business needs and must account for their store's inventory. Tr. 143, 283, 308, 410, 537-38, 614-15, 67475; *Buffalo I* Tr. 76, 124, 152, 345-46, 637-38, 703-05; *Mesa I* Tr. 390-91. Store managers also have petty cash cards that they can use, or can authorize other partners to use, to purchase various items for their store on an *ad hoc* basis. Tr. 284, 410.

c. Store Managers Maintain Business and Personnel Records

Store managers are also responsible for maintaining personnel and business records at the store. It is the store manager's responsibility to keep and maintain personnel records and to answer any questions about them. *See* Er. Ex. 15, at 43. The Store Manager is also responsible for all timekeeping and payroll records. *Id.*, at 19-20.

d. Store Managers Can Deviate from Corporate Structure to Meet Local Needs or Conditions

While it is true that as a nationwide, branded retail chain much of Starbucks policy and operations are uniform or dictated at the corporate level, the store managers nonetheless retain discretion over business at their stores to meet local business needs. For example, training is often

conducted differently than the corporate-wide standard. Tr. 553. Store managers also have some discretion to veer from the guidelines in the corporate “Siren’s Eye,” which provides guidance on store layout, in order to fit her store. *Superior* Tr. 29, 75-76.

There is also evidence that, despite the Employer’s claim that store managers cannot alter operating hours or store business channels (such as mobile ordering), store managers effectively recommend alterations in both areas and, at times, alter those aspects of operations on their own. Tr. 224, 290, 292, 418-19, 420, 540-43. Indeed, the district manager of District 983 could think of only one instance in which she “overruled” a store manager’s decision on altering store hours, and the district manager of District 3113 could not think of *any* instance in which she refused a store manager’s recommendation to close or change store hours. Tr. 226, 370.

Importantly, in terms of personnel, store managers in the Chicago stores can and do adjust or effectively recommend changes in store headcount and staffing hours based on the particular circumstances of the store at a given time. Tr. 144, 213, 285-86, 287, 292, 396-97. (See also Section 2 below regarding scheduling.) There is vague testimony that district managers discuss labor, staffing, and scheduling in Period Planning Visits, or even more frequently, but it is unclear what comes of these discussions. Tr. 339.

Thus, it is evident that despite the high degree of uniformity across all Starbucks stores, local store managers retain authority over various aspects of the business as in *Mesa I*.

e. District Managers’ Involvement in Day-to-Day Supervision of Stores Is Minimal

The store managers’ indisputable supervision and control of day-to-day operations of the store is contrasted with the district managers’ lack of meaningful supervision of day-to-day store operations. The record evidence shows the limited role of district managers in the day-to-day labor relations, management, and supervision of baristas and shift supervisors. *Buffalo I* Tr. 543-47,

614-16, 660-61, 701-02; *Mesa I* Tr. 399-407.

While the district managers here testified that they spend 75% to 90% of their time in stores, they also admitted that this equates to no more than two to four hours in any one store per week (Tr. 133, 267, 395), and employee testified to far more infrequent visits by the district managers before the onset of the Union (Tr. 503, 585-96, 644). Even then, the evidence fails to show any meaningful involvement by district manager in day-to-day store supervision. The evidence shows that district managers spend limited time or unknown time with store partners merely “shooting the breeze” or saying “hi” (Tr. 58, 215, 332-333, 504-05, 586-87, 644), simply “step[ing] in,” “observing,” “looking at,” or “watching,” or vaguely “working on” “issues,” “plans,” or “development,” but does not show them performing actual management of the store to any meaningful degree (Tr. 58, 213-14, 334-35, 343-47, 354, 363, 504-05). And, despite claims about regular “round tables” with district managers and store employees, Wabash store employee Zurek testified that he had had only three scheduled meetings with the District Manager for District 303 in the entire period he worked in the District and even then these meetings were over specific topics not general “round tables.” Tr. 544.

There is evidence that Chicago district managers use various corporate-wide programs or tools in carrying out their roles, including the Decision Center, Inventory Management System, DTS System, Store Manager Approach, DM Approach, Period Planning Visit (“PPV”), Observe & Coach, Quick Connect, Development Conversations, Operational Excellence Field Guide, Steps to Excellence (Tr. 43-45, 47, 54, 64, 57, 112, 113, 115, 211, 213, 267-69, 328-29), but those programs or tools do not involve district managers in the day-to-day supervision of the store to any meaningful degree.

According to the record, PPVs occurs every five to six weeks and involve the district

managers sitting down with store managers to talk about the *store manager's* plans for certain periods of the year according to corporate guidance – mostly seasonal periods – such as extra training the store managers need to roll out to their barista trainers. Tr. 55, 141, 335-37, 342. By their very nature, PPVs do not address day-to-day supervision of store operations.

The record only vaguely describes what occurs in Observe and Coach visits, but they appear to mostly involve the district manager “observing” or “looking at” store functions, with or without the store manager, vaguely “working on” issues, a “plan,” or “partner development,” or providing unspecified “feedback” or “direction” on unspecified “disruptions” or “challenges, but not any specific and active management of day-to-day functions of the store by the district manager. Tr. 58, 213-14, 334-35, 343-47.

The record also vaguely describes what occurs in Quick Connects, but they appear to be no more than a district manager having a “quick conversation,” lasting “a couple moments or half hour,” involving unspecified “issues” or just “checking in.” Tr. 56, 214-15, 347-48.

In any event, these corporate-wide programs or tools are among the Employer’s various “centralized operating procedures” noted in *Mesa I* (Tr. 342-43), but as in *Mesa I* they do not provide a basis for denying the separate, homogeneous group of store employees the right express their wishes concerning collective representation. *Mesa I* at 12. Many of these programs or tools were specifically addressed in *Mesa II* and, as in *Mesa I*, were found to be just another aspect of “centralized administrative control” that is not sufficient to rebut the single store presumption. *Mesa II* at 4, 6.

The nebulousness of the Chicago district managers’ role in day-to-day store operations, even consider their visits to stores, is demonstrated by various examples: If the District Manager of District 303 sees a “gap” in metrics or is “hearing” that “something’s not quite right,” he will

“spend more time” in a store, but how much more time or to do what is unclear (Tr. 60), and his Monday store manager and District meetings are about broader, corporate-wide or district-wide topics not day-to-day store operations (Tr. 64, 65, 67, 72-73). If there are customer experience issues in District 983, the district manager and store manager may “watch” the interactions, but the *store manager* “will come up with a plan on how they are going to execute and change it.” Tr. 354. If the district manager in District 3113 sees some form of “noncompliance,” or some information from the corporate-wide “Decision Center” does not seem “right,” she may have a “conversation” with a partner or store manager and “follow up” with the store manager, but there is no indication that anyone other than the store manager is responsible for correcting the issue on the ground. Tr. 215-19, 222. Indeed, the evidence shows there are only a handful of major store issues, which a district manager may “expect” a store manager to report. Tr. 221.

Even considering other “regular” contacts between district managers and store managers here, say by phone, email, or virtual meetings (Tr. 62-63, 160-61, 219-20, 233, 357-59), the district managers’ remoteness from actual day-to-day supervision militates heavily in favor of the single-store units. *See Mesa I* at 14 nn. 12-14 (citing, among other cases, *Haag Drug*, 169 NLRB 977 (1968), and *Red Lobster*, 300 NLRB 908 (1990)).

Both *Haag Drug* and *Red Lobster* cited in *Mesa I* clearly support the conclusion that the district managers’ role in day-to-day supervision here is too limited to rebut the single-store presumption. *See Haag Drug*, 169 NLRB at 879 (employer can rebut single-store presumption only with specific, detailed evidence establishing that “an individual store lacks meaningful identity as a self-contained economic unit, or the actual *day-to-day supervision* is done *solely* by central office officials, or where there is substantial employee interchange destructive of homogeneity”) (emphasis added)). In *Red Lobster*, the Board found that an area supervisor’s role

was too limited to rebut the presumption even though he spent a “full day” in each store each week and maintained “daily telephonic communication” with each store. *Red Lobster*, 300 NLRB at 912. See also *Levitz Furniture*, 223 NLRB 47, 48 (1976), where the Board held that single branch units were appropriate even though group departmental managers visited stores “quite often” and there was “frequent daily telephone contact between branch and group officials” where branch managers exercised a substantial degree of authority over the day-to-day operations.

Unquestionably, district managers here are not “solely” responsible for day-to-day supervision at the Chicago stores, and they do not even spend as much time actually in the stores as in *Red Lobster* or *Levitz Furniture*. Thus, the store managers’ supervision and control over day-to-day operations here conforms to *Mesa I*.

2. Store Manager Prepare Work Schedules

Mesa I found that store managers “prepare work schedules” and “secure coverage outside of employees’ stated availabilities.” *Mesa I* at 13. Store managers in *Mesa I* used a centralized system “Partner Hours” to generate schedules nationwide, but modified and changed the schedule regularly. *Id.* at 5.

The same is true here. The nationally-applicable “Partner Guide,” or employee handbook, contains several references to work hours and schedules describing the store manager as responsible for scheduling. *Buffalo I* Er. Ex. 13 at 17. The Partner Guide says, “The store manager posts weekly work schedules in advance so partners can plan ahead. For this reason, a partner should submit a request for planned time off from work to the store manager for approval as far in advance as possible.” *Buffalo I* Er. Ex. 13, at 17.

The store manager job description also states that store managers are responsible for making staffing decisions, including scheduling. *Buffalo I* Pet. Ex. 13. The nationally-applicable Partner Availability Form also explicitly directs partners to communicate with store managers

regarding scheduling and reiterates that store managers are responsible for scheduling: “Partner: Please return this form and discuss with your store manager upon completion. Your store manager will use this information as well as the business needs of the store to build a schedule that balances both.” *Buffalo I* Er. Ex. 4. The form requires a store manager’s signature, and no other Employer representative. *Id.*

The record testimony further confirms that the store manager creates and posts the work schedule in the first instance, making decisions about which individual will work on which days. Tr. 61, 117, 120, 125, 279-80, 404-05, 513-14, 593, 596-99, 651-52; *Buffalo I* Tr. 131, 317-18; *Mesa I* Tr. 378-80; *Superior* Tr. 34-35, 52-53, 80. The “Partner Hours” tool may recommend schedules, and both store managers and district managers monitor labor and discuss staffing plans to keep within forecasted guidelines, but it is undisputed that the store managers nevertheless make regular adjustments to schedules based on particular circumstances in their store and secure coverage for gaps in the schedule, such as where an employee calls out unexpectedly or the corporate-wide “Partner Hours” tool cannot identify enough partners to work. Tr. 119-20, 122, 166-67, 279-80, 351, 353, 405, 513-14, 564, 593-99, 652-54; Chicago Pet. Exh. 6; *Buffalo I* Tr. 145, 261, 317-18; *Mesa I* Tr. 378; *Superior* Tr. 34-35, 52-53, 79-80. Indeed, the District Manager for District 303 described the complex and *store-specific* process Chicago store managers must go through to build a schedule, even considering the technologically-forecasted labor hours, in that store manager must “write a detailed schedule for each employee based on labor, based on anything that could be affecting the store, whether that’s promotional, event driven outside the store . . . a shift of season, employee requests . . . development days, employee meetings . . .” Tr. 102. The store manager is responsible for communicating changes to the schedule to partners, regardless of the reason for the change. Tr. 353.

The store managers' role in the Chicago stores is also *not* limited to just making the working schedule for the partners in their stores, although that is a significant labor relations function in and of itself, but also includes independently adjusting or effectively recommending adjustments to both store staffing headcount and labor hours of the store. Tr. 119, 122, 144, 161, 229-30, 285-86, 292, 369-97, 433. Indeed, the District Manager of District 303 testified that he does not often overrule experienced store managers' decisions on adding staff (Tr. 161); the District manager for District 3113 similarly testified that it is "pretty rare" that she would override a store manager's recommendation to schedule more labor hours than those established by the corporate technology (Tr. 230, 285-86); and the District Manager for District 983 testified that store managers can independently deviate from the labor hours allotted by corporate technology within a certain limit and even more so in consultation with the district manager (Tr. 433).

Store managers also play a significant role in partner's getting overtime. Store managers in all Chicago stores are responsible for authorizing partners to work hours in addition to those the partner was scheduled to work initially in a given day, which can lead to the partner receiving overtime pay in the week. Tr. 406-07, 432, 598. Store managers in District 3113 can also schedule actual overtime hours, although the district manager may "follow up" with the store manager. Tr. 213, 286. The District Manager of District 3113 could identify only one instance in which she overrode a store manager's recommendation on overtime and admitted that it was "rare" for her to disagree with store managers, even though store managers request overtime approximately ten times each month. Tr. 287, 310.

Overall, while store managers must conduct scheduling within the staffing and hours allotted or forecasted by corporate technology, the store managers nevertheless exercise significant control, as detailed above, over scheduling and hours. It is also noteworthy that the store manager

in *Mesa II* was subject to the same technological limitations on scheduling, staffing, and hours – and district manager review in those areas – as described by the district managers here. *See Mesa II* at 4-5. Those factors, however, did not differentiate *Mesa II* from *Mesa I* in terms of the outcome. *Id.* at 6. It follows, then, that store managers’ role in scheduling here conforms to *Mesa I*.

3. Store Managers Approve Time Off

Another aspect of the store managers’ role in scheduling found in *Mesa I* was “approving time off requests.” *Mesa I* at 5, 13.

The same is true here. The Partner Guide describes the responsibility of store managers in approving other partner time off or absences. Er. Ex. 13, at 53, 57-59. “The store manager posts weekly work schedules in advance so partners can plan ahead. For this reason, a partner should submit a request for planned time off from work to the store manager for approval as far in advance as possible.” Er. Ex. 13, at 17. It goes on to describe the responsibility of store managers in approving other partner time off or absences. Er. Ex. 13, at 53, 57-59.

The witness testimony also establishes that the store manager is responsible for approving and has authority to approve or disapprove employee requests for time off. Tr. 138-39, 280, 405, 514-17, 599-603, 654-55. If the request is made before the schedule for the week is posted, the store manager makes the approval through the Partner Hours application, and if the request is made after the schedule is posted the employee must go to the store manager directly for approval, and the store manager either approves or denies the request, and the store manager also secures coverage if requests are approved. Tr. 514-17, 599-603, 654-55, 657-58; Chicago Pet. Exh. 8; *Buffalo I* Tr. 514-23, 606-07, 654-55, 698-99; *Mesa I* Tr. 386-87; *Superior* Tr. 80-81. Indeed, even when shifts are offered to outside partners via on-line platforms, the store manager must approve an outside partners working their stores. Tr. 157-58.

Thus, the store managers' role in scheduling employees conforms to *Mesa I*.

4. Store managers Assure Accuracy of Time Tracking and Payroll

Mesa I found that store managers assure "accuracy of time tracking and payroll records."

Mesa I at 5.

The same is true here. The Partner Guide is clear that store managers are responsible for correcting time records and verifying employees' hours worked. Er. Ex. 13, at 19-20. The Partner Guide has several other references to store managers' role in communicating with store-level employees on other pay-related issues. Er. Ex. 13, at 22-23.

The record testimony also establishes that store managers make changes in the payroll system to accurately reflect a partner's work time, for example, when the timekeeping system is down, a partner makes a mistake in punching, or is shorted hours. Tr. 128, 281, 322, 408, 518-20, 603-7, 658-60; Chicago Pet. Exhs. 6, 7; *Buffalo I* Tr. 320, 511-14; 604-06; 653-54; 697-98; *Mesa I* Tr. 378-86; *Superior* r. 34-35, 79-80. This store manager responsibility includes ensuring that partners are paid in accordance with Chicago's unique Fair Workweek Ordinance. Tr. 130-31.

The role of Chicago store managers in time keeping and payroll also includes the power to receive employee complaints about pay shortages or discrepancies and to rectify those problems. Tr. 128-29, 281-82, 409, 520-21, 608, 660-61.

Thus, the store managers' role in time keeping and payroll conforms to *Mesa I*.

5. Day-to-Day Work Assignments Are Made with Store Autonomy

Mesa I found that store managers and shift supervisors "make work assignments based on their independent judgment of employees' preferences and strengths." *Mesa I* at 5-6, 13. Although the Employer's "Play Builder" tool projected workflow, product need, and employee tasks and assignments in *Mesa I*, store managers and shift supervisors nevertheless determined the locations for employees and their respective assignments, which made the most sense according to the in-

time business needs. *Id.* at 6.

The same is true here. Day-to-day work assignments are determined at the Chicago store level. Store managers and shift supervisors serve as the “play caller,” giving out daily assignments, and shift supervisors do so subject to the store manager’s direction and supervision. Tr. 139-40, 299-300, 390, 521-23, 609. As in *Mesa I*, the “Play Builder” tool is available to aid in work assignments, but the record evidence indicates that actual use of the Play Builder tool is limited or the extent of actual use by store personnel unknown. Tr. 139-40, 299, 411, 554, 609-10. In any event, Play Builder only outlines roles to be performed and leaves the actual assignment of individual employees to the discretion of the store manager or shift supervisors, which includes assessment of partners’ strengths and preferences and the particular needs of the store at the time. Tr. 139-40, 299-300, 393-94, 410-11, 521-23, 610, 662-63; *Buffalo I* Tr. 130-31, 147-48, 149, 549, 711; *Mesa I* Tr. 385-86.

Thus, the store managers’ role in work assignments conforms to *Mesa I*.

6. Store Managers Interview and Hire Partners

Mesa I found that store managers “interview job applicants and effectively recommend individuals for hire.” *Mesa I* at 6, 13.

The same is true here. The Employer’s store manager job description provides that store managers are responsible for hiring. Pet. Ex. 13. While there was testimony here that store managers may receive assistance from other store managers or a district manager in reviewing applications or setting up interviews (Tr. 340-41), or that a district may take the “extraordinary step” of having store managers act in the capacity of the hiring store manager in cases of unusual staffing shortage or due to the COVID isolation of the store manager (Tr. 104, 236-37, 288-90, 313-14), there is no dispute, even among the district managers here, that the individual store managers are ultimately responsible for and have authority to hire in their stores, including vetting

applications and recruiting from other stores, arranging and conducting interviews, following up, and having the final say on whether an applicant is hired. Tr. 134, 275-76, 289, 397-99, 505-06, 507-10, 584-85, 636-38, 645-47; *Buffalo I* Tr. 232, 237, 500-03, 592-600, 688-93; *Mesa I* Tr. 365-66; *Superior* Tr. 43, 81-82; *Superior* Tr. 35-49, 81-82.⁴

Thus, the store managers' role in interviewing and hiring conforms to *Mesa I*.

7. Store Managers Conduct Orientations and Training

Mesa I found that store managers conduct orientations and training. *Mesa I* at 5, 13.

The same is true here. The Barista Basics Training Plan document shows that store managers are involved in training for each new employee, and that nobody above the level of store manager carries out these duties. See *Buffalo I* Er. Ex. 14, at 1 (“Your manager and barista trainer will help you along with way. . . Your manager will explain the order of your training plan.”).

Each witnesses testified that the store manager conducts the new employee orientation, known as the “first sip,” gives direction to new hires to make sure they complete it, and otherwise instructs the employees regarding store policies, dress code, store culture, and other new employee topics. Tr. 134-35, 292-93, 399, 510-11, 585, 590, 649; *Buffalo I* Tr. 507-08, 602-03, 651, 695; *Mesa I* Tr. 375-76; *Superior* Tr. 77-78.

While there was testimony about occasional group training (Tr. 105, 164), the record is clear that the individual store managers are responsible for ensuring that their partners undergo

⁴ With regard to interviews, the Employer introduced exhibits with guidelines for how store managers should conduct the interviews in question. Even these outlines emphasize a great deal of agency on the part of the store managers conducting the interview. They contain numerous references to the fact that the store manager should use their own experience and authority to carry out the interview, including instructions to: “share your experience, and build a connection with the candidate. Offer the candidate a beverage or share a coffee press of your favorite coffee and describe what makes it your favorite!”, to “Discuss the Starbucks Experience with the candidate. Share how creating Best Moments come to life in your store[,]” and to “Describe a day in the life of a Barista.” *Buffalo I* Er. Ex. 10, at 1. The Employer exhibit for interviewing shift supervisors has parallel language throughout. *Buffalo I* Er. Ex. 11.

training and are adequately trained to perform the job. Tr. 105-06, 135-36, 165, 241, 243. 294-96, 399-400, 511-13, 591, 650-51; *Superior* Tr. 35-36, 50, 78. While training includes computer learning and other employee trainers, the store manager is involved with and ultimately responsible for the training. Tr. 135-36, 241, 243, 399-400.

Thus, the store managers' role in orientation and training here conforms to *Mesa I*.

8. Store Managers Play a Central Role in Partner Promotions

Mesa I found that store managers observe employee performance and “play a central role in promotions.” *Mesa I* at 5, 13.

The same is true here. The Partner Guide explicitly provides that store managers are responsible for making decisions concerning partner promotions. Er. Ex. 13, at 48-49. The store manager job description also includes among their responsibilities: “Monitors and manages store staffing levels to ensure partner development and talent acquisition to achieve and maintain store operational requirements” and “Providing partners with coaching, feedback, and developmental opportunities and building effective teams.” Pet. Ex. 13.

The record testimony here is clear that store managers are responsible for employee development and promotions. The store manager facilitates and decides who is eligible to become a “barista trainer,” which comes with additional bonus opportunities for training new baristas. Tr. 136, 276, 400, 526; *Buffalo I* Tr. 509-11, 603-04, 643, 651-53, 695-97, 665; *Mesa I* Tr. 377-78. The store manager also decides who receives, or effectively recommends who receives, promotion to shift supervisor, which involves a higher rate of pay and responsibility, and store managers can also block a partner from receiving such a promotion despite other managers' recommendations. Tr. 137, 165, 279, 322, 401-404, 523-25, 638, 666-67; *Buffalo I* Tr. 509-11, 603-04, 643, 651-53, 695-97; *Mesa I* Tr. 377-78. Indeed, Wabash store employee Zurek explained that his store manager made him a shift supervisor without even undergoing the shift supervisor interview or

any other manager's involvement. Tr. 524-25. Further, the District Manager for District 303 explained that, not only are store managers responsible for promoting shift supervisors, but they are responsible for identifying and promoting partners to shift supervisor so that their store has the required "complement" of shift supervisors, and he has overruled a store manager's decision on promotion to shift supervisors only one time. Tr. 145, 166.

While other store managers may be involved in the interview process for shift supervisors in Districts 983 and 3113 to account for potential bias by the home store manager, that home store manager still makes the final decision on promotion to shift supervisor even, as employee Booth-Hodges testified, when it is against the recommendation of the district manager. Tr. 279, 404, 667-668, 690, 667-68.

Thus, the store managers' role in promotions here conforms to *Mesa I*.

9. Store Managers Resolve Employee Grievances, Complaints

Mesa I found that store managers "mediate daily grievances." *Mesa I* at 13. The same is true here.

The Partner Guide discusses the role store managers should play in addressing employee issues and grievances. *See* Er. Ex. 13, at 26, 28. The Partner Guide also directs how conflicts between partners should be addressed to the store manager:

If a partner experiences a disagreement or conflict with another partner, the partner should first discuss the problem with the other partner and make every effort to resolve it in a respectful manner. If unsuccessful, the partner should seek manager assistance in resolving the matter respectfully and professionally. [...]

Er. Ex. 13, at 45-46.

The record testimony here shows store manager are responsible for adjusting a wide range of employee grievances and dealing with inter-employee conflicts. Tr. 140-41, 152, 282-83, 409, 531-32, 534-35, 566, 613-14, 672, 673; *Buffalo I* Tr. 526-28, 655-58, 700; *Mesa I* Tr. 389. For

example, Wabash store employee Zurek described a situation where the store manager resolved his sexual harassment complaint against the assistant store manager without any other manager's involvement. Tr. 532.

The Employer's witnesses pointed to the nationwide Partner Resource Center or PRSC, which they described as essentially a call center, as another option available to employees for resolving complaints. The employees, however, were either unaware of Partner Resource Center/PRSC or saw it, at best, as a secondary resource. Tr. 535, 629, 673; *Buffalo I* Tr. 526-28, 655-58, 700; *Mesa I* Tr. 389.

Thus, the store managers' role in mediating employee grievances here conforms to *Mesa I*.

10. Store Managers Effectuate and Effectively Recommend Discipline

Mesa I found that store managers "issue or effectively recommend discipline and terminations." *Mesa I* at 5, 13. While the store managers there used the "Virtual Coach" tool and consulted with other corporate resources in disciplinary matters, they were nevertheless "tasked with effectuating the discipline." *Id.* at 5.

The same is true here. The Employer's Partner Guide has numerous references to the store manager's role monitoring and addressing problems with employees in the store. Er. Ex. 13, at 29-30; 32-34; 40; 42. The Employer's Corrective Action Form also gives clear indications of the role of store managers in administering discipline. At the bottom of the form, it states: "Manager: Print two copies of this form. Give one signed copy to the partner and retain one signed copy in the store partner file." Er. Ex. 18. There is nothing on the form which mentions the district manager, and there is no space for a district manager's sign-off. *See id.* The document also states: "Partner: The above has been discussed with me by my manager." *Id.* The form also gives guidance about the appropriate representative to address questions with corrective action: "If you

disagree or have any concerns about this corrective action, you are encouraged to talk it over with the manager who is delivering it to you.” *Id.*

Similarly, the Notice of Separation form highlights the integral role of store managers in employee terminations. The form is to be filled out by the employee’s manager. Ex. 29. At the bottom, there is a signature line for the store manager, a witness, and the employee, and it contains instructions for the store manager: “Manager: Print two copies of this form. Give one signed copy to the partner and retain one signed copy in the store partner file.” *Id.* The store manager job description also explicitly states that store managers are responsible for discipline and termination. Pet. Ex. 13.

These Employer documents are, of course, consistent with record testimony that store managers are responsible for disciplining employees and can effectively recommend discipline, including separation. Tr. 138, 151-52, 250-51, 301-02, 420-22, 530, 612, 670; *Buffalo I* Tr. 503-07, 600-02, 648-51, 693-95; *Mesa I* Tr. 367-71; *Superior* Tr. 63-66, 92-93.

The district managers made reference to a “Virtual Coach” tool as a guide for store managers in issuing discipline and also to their involvement in disciplinary matters before discipline is issued. Tr. 80, 82, 147, 250-51, 381-86. Store manager witnesses, however, made no reference to using virtual coach in their testimony regarding her practices for issuing discipline. *Mesa I* Tr. 373-74; *Superior* Tr. 63-66, 92-93. And, the Virtual Coach document itself makes clear that “[t]he Partner Relations Virtual Coach is intended to complement, not replace, your active assessment and judgment”⁵ Er. Ex. 22.

⁵ The Employer also pointed to its nation-wide Partner Resource Center to which in theory an employee could appeal any discipline. No witness, however, testified at the hearing regarding having any knowledge that any specific employee had actually used the Partner Resource Center for that purpose. In any event, that theoretical appeal procedure does not at all undermine the store manager’s role in, and authority for, employee discipline as discussed.

In any event, whatever guidance the Virtual Coach might provide (if it were actually used), and whatever involvement or direction by district managers, the fact remains that it is the store manager who monitors employee performance and conduct in the first instance, who initiates discipline in the first instance, either making the final decision or effectively recommending the level, and who ultimately delivers or effectuates the discipline. Tr. 138, 151-52, 250-51, 301-02, 303, 305, 420-21, 530, 670.

The District Manager of District 303 exemplified the great responsibility store managers have for discipline in the first instance when he disciplined a store manager, because that store manager did not fulfill his/her responsibility to discipline store employees. (Tr. 152.) See also Chicago Er. Exh. 7, which shows that a store manager received discipline, in part, because that *store manager* “failed to document performance conversations through corrective action” and “failed to take necessary steps to address inappropriate behavior . . .” Nothing could speak more loudly to the fact that *store managers* here have a great responsibility for and role in disciplining employees in the first instance, regardless of how much review might later be given from the district manager.

Indeed, the contents of a performance improvement plan issued to a store manager in District 303 demonstrates just how deeply store managers are involved in investigating, regulating, and documenting the unique circumstances of employee performance and conduct in their stores. Chicago Er. Exh. 5. That document shows, for example, that the *store manager* must have “plan” to “document partner behaviors [and] performance conversations,” must “conduct sufficient investigation before providing documentation” to employees, must “tailor[] his coaching to each partner,” and must “Investigate[] Partner Concerns, appropriately by capturing clarifying information from all partners involved, asking questions when needed (ex. Help me understand

why you did X?), collecting statements if situation requires, assessing and determining what needs to happen to resolve partner concerns.” *Id.* The District Manager for District 303 admitted that he *personally* has been involved in investigating store employee conduct only ten times in two and one-half years (Tr. 93), that there were only two occasions where he “sat in” on the administration of discipline (Tr.202), and he could not recall more than “a couple” of times he signed a disciplinary form (Tr.179-80, 193), all of which shows that in the overwhelming majority of cases it is the store manager that gathers the information that will form the basis of discipline and that effectuates the discipline.

The District Manager of District 3113 similarly demonstrated the great extent to which store managers influence discipline when she admitted that a store manager used his own judgment to give *lesser* discipline than he and the District Manager had previously discussed (Tr. 255).

While the Employer will argue that the district managers here are the final word on discipline in the Chicago stores, after consultation of Virtual Couch, with them, or with other corporate resources, there remains no doubt that, as noted above, store managers investigate, initiate, decide upon or effectively recommend discipline, and effectuate discipline. Tr. 138, 151-54, 250-51, 301-02, 303, 305, 420-22.

Fundamentally, as *all* the District Managers here testified, it is the Chicago store managers that observe employees and initiate discipline in the first instance, without which partners would not be disciplined *at all*. Tr. 138, 151-53, 154, 250, 302, 420-21.⁶ The store manager’s *initiation* of discipline here, even if issued in consultation with Virtual Coach or reviewed and approved by district managers, is by itself sufficient to find that the store managers play a significant role in this area of labor relations. *See Starbucks*, 371 NLRB No. 71 slip op. at 2 (despite nationwide

⁶ For example, the District Manager for District 3113 testified that she only becomes aware of employee performance issues “[t]hrough conversations with [her] store managers.” Tr. 250.

tools and policies, “it is the Store Managers who implement these tools and policies at the local level, and make adjustments in real time”). See also e.g., *AVI Foodsystems, Inc.*, 328 NLRB 426 (1999), where the Board held that the local manager “plays a significant role in the discipline of employees, deciding whether to impose discipline *at all* and recommending the degree of discipline.” (Emphasis added). See also *Seattle* at 11 (store managers’ involvement in discipline was evidence of local autonomy, despite district manager’s ability to override discipline, where store managers decide whether to consult the Virtual Coach “at all” and “when a store manager must initiate the process”).

Moreover, all the District Managers here testified that the discipline a partner ultimately receives is generally what the store manager recommended in the first instance (or what the store manager ends up giving the partner), and the District Managers provided little concrete evidence of significant deviation between the store manager’s initial decision or recommendation on discipline and the ultimate discipline the partner receives. Tr. 148-49, 163, 303, 305, 422.

As in *Mesa I*, the store managers’ involvement in discipline here (including initiating, recommending, and effectuating) demonstrates the store managers’ autonomy in a significant aspect of labor relations matters. See *Mesa I* at 14 n. 14, which cites *Foodland of Ravenswood*, 323 NLRB 665, 667 (1997) (“recommend discipline”); *Bud’s Thrift-T-Wise*, 236 NLRB 1203, 1204 (1978) (“effective recommendations for . . . discipline”); *Lipman’s*, 227 NLRB 1436, 1437 (1977) (store manager had “substantial authority” over personnel even though “personnel director makes final decisions as to discipline”).

There are many cases beyond those cited in *Mesa I* where the Board found that local managers’ involvement in discipline by merely by initiating, recommending, or effectuating it supported single-store units, even where those managers lacked final authority over it. *AVI*

Foodsystems, Inc., 328 NLRB at 426; *General Mills Restaurants, Inc.*, 300 NLRB 908, 911 (1990) (even though local general managers did *not* make effective recommendations on discharge, “it remains that the general manager plays an active role in disciplining employees”); *Executive Resources Associates, Inc.*, 301 NLRB 400 (1991) (local “managers recommend . . . discipline . . . [although] executive director exercises approval authority on these matters”); *Erickson Barron Co.*, 226 N.L.R.B. 1305, 1306 (1976) (“The store manager also makes recommendations with regard to discipline and is responsible for implementation of disciplinary action.”); *Duluth Avionics*, 156 NLRB 1319, 1320 (1966) (local manager’s “authority in matters of employer-employee relations, such as . . . discharges, discipline . . . is limited to recommendations to the manufacturing manager and/or industrial relations manager located in Duluth”).

Thus, the Chicago store managers’ role in discipline conforms to *Mesa I*.

11. Store Managers Play an Active Role in Permanent Transfers

Mesa I did *not* rely on the store managers’ role in effectuating permanent partner transfers between stores, but that is yet another factor here that demonstrates the significant role store managers here play in labor relations.

Employees at all three Chicago stores described the process by which they transferred from one store to others, relying on the store managers at their home store and the store manager at the receiving store to make the transfer happen. Tr. 499-500, 580-84, 641-43. *See also Buffalo I* Tr. 532-34; *Mesa I* Tr. 395-96. If a district manager had any involvement in the process — which there is no evidence to suggest — the employees had no knowledge of it. Tr. 500-01, 584. *See also Buffalo I* Tr. 532-34; *Mesa I* Tr. 395-96. Even district managers for District 983 and 3113 confirmed that store managers play a central role in recommending and effectuating transfers, and that store managers can effectively block the transfer of an employee to or from their stores. Tr. 247, 296-99, 387, 423-24. And, the District Managers from District

983 and 3113 could provide no specific instance in which they prevented a partner transfer when the store managers had approved it. Tr. 298-99, 424.⁷

Thus, even more than in *Mesa I*, the Chicago store managers exercise significant control over labor relations through their role in permanent transfers.

C. Employee Skills, Functions, and Working Conditions

Mesa I found that wages and benefits and employees' skills and working conditions were largely uniform throughout the district and nationally, but that such uniformity was characteristic of retail chain operations and did not outweigh other aspects of local autonomy. *Mesa I* at 15. *See also Seattle* at 13 (similarity of skills, functions, and working conditions, "largely a function of corporate level control," did not favor rebuttal of the single-store presumption.)

The most important factor to establish local autonomy, of course, is control over labor relations. *See UPS Ground Freight, Inc. v. NLRB*, 921 F.3d 251, 254 (D.C. Cir. 2019) ("the Acting Regional Director reasonably relied on the significant evidence of local autonomy over labor relations matters"). Indeed, the extent of store manager authority over personnel is sufficient, alone, to establish local autonomy of individual stores. *See Bud's Thrift-T Wise*, 236 NLRB at 1204 ("With regard to local autonomy, we find that the individual store managers exercise considerable authority in personnel matters."); *UPS Ground Freight, Inc.*, 921 F.3d at 254.

Thus, as in *Mesa I*, uniformity in wages, benefits, skills, and working conditions is not sufficient to overcome the single-store presumption here given the degree of local autonomy already discussed.

⁷ The District Manager from District 3113 testified about an instance in which a store manager processed a transfer by "circumventing" both district managers involved, but the situation had nothing to do with the approval or disapproval of the transfer, only that the "process" resulted in the transferring partner not being paid on time. Tr.248-49. Otherwise, even in that situation, the store managers fully effectuated the transfer. Tr. 248-49. The District Manager for District 3113 identified only a single transfer request that she denied, but there is no indication as to whether the store managers had approved that request. Tr. 388.

D. Employee Interchange

Mesa I concluded that the level of employee interchange there supported the single-store unit, because the interchange was voluntary and the amount of interchange at the petitioned-for store was insufficient to show that the single store's homogeneity had been destroyed or to rebut the single-store presumption.⁸ *Mesa I* at 16-17. The same conclusion is warranted here. Here, there is no record evidence of anything but voluntary employee interchange of a limited amount.

1. All Employee Interchange at the Chicago Stores Is Voluntary

The Company has not, and cannot, establish a single involuntary transfer to or from the Chicago stores. While the Employer's witnesses testified that theoretically an employee could be mandated to work at another store, there was no testimony from anyone that this had ever happened at the Chicago stores. Employee witnesses confirmed the voluntary nature of any work in a non-home store. Tr. 538-39, 616, 675-76. They testified that they had experiences being asked to take shifts at other stores and declining to do so without discipline or any other repercussion and/or never being told they were required to work anywhere other than. Tr. 538-39, 616, 675-76. Even when a store was closed, employees were given the opportunity to work at another store to pick up hours, but they did not have to do so. Tr. 306-07. Indeed, all the District Managers here confirmed that partners working in other stores in their districts did so voluntarily – either having been merely “offered” hours or “requested to” work hours and accepting those hours or themselves wanting to “pick up” hours – but that the partners could refuse to work in other stores, *even if*

⁸ An analysis of employee interchange goes to the determination of whether there is “functional integration of a sufficient degree to *obliterate* separate identity” between stores. *Haag Drug Co.*, 169 NLRB 877, 877 (1968) (emphasis added); *see Cargill, Inc.*, 336 NLRB 1114, 1114 (2001). The Board also distinguishes between voluntary and involuntary interchange and accords less weight to permanent transfers. *See Red Lobster*, 300 NLRB 908, 911 (1990) (“we find that the degree of employee interchange is minimal, and the significance of that interchange is diminished because the interchange occurs largely as a matter of employee convenience, i.e., it is voluntary . . . Permanent transfers [are] a less significant indication of actual interchange than temporary transfers.”).

scheduled or assigned to do so. Tr. 155-56, 165, 195, 259, 306-07, 425, 430. As the District Manager for District 303 explained, if an employee were scheduled into another store but refused to go, the store manager would simply schedule another employee. Tr. 195. These circumstances are consistent with the employee testimony in the prior cases. *Buffalo I* Tr. 538, 613, 706-07; *Mesa I* Tr. 343; *Superior* Tr. 57, 90.

Thus, as in *Mesa I*, there is zero evidence that any employee has ever been forced to work at another store or disciplined for refusing to do so. Thus, for all the record evidence shows, all employee interchange between the Chicago stores and any other store has been completely voluntary.

2. The Amount of Employee Interchange at the Chicago Stores is Limited

In order for employee interchange to overcome the single-facility presumption, it must be “substantial” and “destructive of homogeneity” in a petitioned-for unit. *Mesa I* at 15-16. The limited employee interchange in Districts 303, 983, and 3113, generally, and at the Chicago stores, specifically, as in *Mesa I*, is not nearly enough to obliterate the homogeneity of the workforce in the petitioned-for stores.

Mesa I found that “special consideration” had to be given “to interchange at the petitioned-for store, since it is the homogeneity of those employees that is the central question.” *Mesa I* at 16. *Mesa I* went on to find insufficient interchange at the petitioned-for store where, in 2021, the percentage of hours worked at the petitioned-for store was 1.4% of the total hours worked, and the percentage of shifts worked at the petitioned-for store was 1.4% of the total shifts worked; and where the percentage of shifts worked by borrowed partners district-wide was 1.9% of total shifts worked, and the percentage of hours worked by borrowed partners district-wide was 1.8% of total hours worked. *Id.* at 16-17.

The percentages of hours and shifts worked by borrowed partners at the Chicago stores and in “Area 30”⁹ overall are not materially different than those in *Mesa I*.

At the Logan store, the percentage of borrowed shifts and hours are as follows:

Year	Percent of Borrowed Shifts	Percent of Borrowed Hours
2019	2.32	1.97
2020	6.4	6.11
2021	2.0	2.0

Pet. Exh. 3 at Tab Q8 (“Borrowed Partner Analysis”).

At the Woodlawn store, the percentage of borrowed shifts and hours are as follow:

Year	Percent of Borrowed Shifts	Percent of Borrowed Hours
2019	.63	.56
2020	.96	.81
2021	2.06	1.52

Pet. Exh. 4 at Tab Q8 (“Borrowed Partner Analysis”).

At the Wabash store, the percentage of borrowed shifts and hours are as follow:

Year	Percent of Borrowed Shifts	Percent of Borrowed Hours
2019	.N/A	N/A
2020	N/A	N/A
2021	16.54	14.45
2022	10.01	7.8

⁹ Area 30 encompasses the downtown Chicago area. Tr. 38.

Pet. Exh. 2 at Tab Q8 (“Borrowed Partner Analysis”).

For the entire Area, the percentage of borrowed shifts and hours are as follow:

Year	Percent of Borrowed Shifts	Percent of Borrowed Hours
2019	2.17	1.8
2020	4.24	4.06
2021	2.05	1.88
2022	2.01	1.7

Pet. Exhs. 2-4 at Tab Q4.

These percentages at Logan, Woodlawn, and Area-wide are, more or less, indistinguishable from *Mesa I*. The percentages at Wabash, while somewhat higher than Logan, Woodlawn, and *Mesa I*, are still quite low in terms of what constitutes significant interchange for purposes of “obliterating” homogeneity. *See Mesa I* at 17 at n. 21. *See also Cargill, Inc.*, 336 NLRB 1114, 1114 (2001) (“we would not view 13-14 instances of interchange among 23 employees over an 8-month period as demonstrating substantial interchange sufficient to overcome the single-facility presumption.”)

In any event, the data on the Wabash store is somewhat dubious, because the Wabash store has only been open for about three months. Tr. 446, 491, 498. Over time, interchange at the Wabash store will become similar to that of the other stores. Indeed, the Employer’s statistical “expert” admitted that the Wabash store will regress to the mean and eventually look much like other stores in the district in terms of interchange. Tr. 491-92. And, although it is a small sample

size, the 2022 numbers show that the Wabash store is, in fact, trending toward the even lower levels of borrowed partners of the other stores.

Overall, *Mesa I* relied on the percentage of shifts and hours worked at the petitioned-for store to find insufficient interchange to rebut the presumption. *Mesa II* similarly relied on data showing the limited percentage of shifts worked at the petitioned-for store, even though the precise number of hours worked at the petitioned-for store was unknown. *Mesa II* at 7. Similarly, the *Seattle* decision focused on the percentage of “total hours worked” at the petitioned-for store by borrowed partners (“at most 5%”), coupled with the voluntary nature of the interchange, to find interchange insufficient to overcome the single-facility presumption. *Seattle* at 15.¹⁰ Based on the similarly low percentage of total shifts and hours worked by borrowed partners at the petitioned-for Chicago stores, there is no reason to reach a different conclusion than in the *Mesa* or *Seattle* cases.

As *Mesa I*, *Mesa II*, and *Seattle* make clear, the foregoing data on the percentage of total shifts and hours worked at the petitioned-for stores by borrowed partners here are the essential factors compelling the conclusion that interchange here is insufficient to rebut the presumption. Even the Employer’s “expert” analysis, however, bolsters that conclusion. That “expert” analysis *itself* confirms the low percentages of borrowed partners at the Chicago stores after all of the “sensitivity” controls were applied for factors such as opening and closing stores, permanent transfers, etc. To wit, of all the days the Logan store was open for business of between April 29,

¹⁰ The Board made a similar observation in its order denying review of the DDE in *Buffalo I*, “we observe that although the Employer has demonstrated that a significant percentage of employees work ‘at least one shift’ at another store ‘per year,’ this is not evidence of *regular* interchange sufficient to rebut the single-facility presumption, especially because the data provided by the Employer indicate that the petitioned-for stores ‘borrow’ only a very small percentage of their labor from other stores.” Order, *Starbuck’s Corp.*, Case Nos. 03-RC-285929, 03-RC-285986, 03-RC-285989, consol. (Dec. 7, 2021), at n.1 (emphasis in original) (citing *Cargill, Inc.*, 336 NLRB 1114, 1114 (2001)).

2019 and February 29, 2020, only around 2% of those days had any borrowed partners working at all. Chicago Er. Exh. 9(b) at 58. At Woodlawn, it was around 4%. Chicago Er. Exh. 9(c) at 49. The Wabash store does not appear in this analysis, because it had not been open long enough to survive after application of the “sensitivities.” Chicago Er. Exh. 9(a) at 57. As the Employer’s expert conceded, however, the Wabash store will eventually regress to the mean of the District in terms of interchange (Tr. 491-92), and the average District 303 percentage of store days requiring at least one borrowed partner is low (12.1%), and even that District 303 percentage far *lower* than the percentage of store days requiring at least one borrowed partner for the petitioned-for store in *Mesa I*. See *Mesa I* at 9 (“borrowed partners were required for approximately 24% of total workdays in” the petitioned-for store).

Moreover, the “expert” analysis shows that on the whole across the districts the total percentage of workdays in which borrowed partners are required in *any store* is very low. On any given day from April 29, 2019 to February 29, 2020, only about 1.8% of partners across District 303 were working in a store that is *not* their home store. Chicago Er. Exh. 9(a) at 58. In District 313, it was 0.7%. Chicago Er. Exh. 9(b) at 59. In District 983, it was 8.7%. Chicago Er. Exh. 9(c) at 49. In other words, after accounting for various factors such as COVID and permanent transfers, on any given day across the three districts 91.3% to 99.93% of all partners were working in their *home store*. Thus, even the Employer’s exhibits reveal the homogeneity of the workforces in the individual stores.

Overall, considering the numbers *Mesa I*, *Mesa II*, and *Seattle* deemed critical – shifts and hours worked by borrowed partners at the petitioned-for stores – it is evident that interchange here is nowhere close to enough to obliterate the homogeneity of Chicago stores.

It no mystery, then, that the Employer tries to obscure those critical numbers by focusing instead on the number of partners who worked at more than one store across the districts. For example, the Employer's exhibit shows that in District 303 43.8% of partners worked in more than one store during the observed period. Chicago Er. Exh. 9(a) at 1. In District 3113, it was 32.5%. Chicago Er. Exh. 9(b) at 1. In District 983, it was 23%. Chicago Er. Exh. 9(c) at 1. These district-wide statistics, however, are actually *lower* than the same category of statistics in *Mesa I*. *Mesa I* at 9. Moreover, as the decision in *Seattle* explained, this focus of the Employer's argument has little value to the analysis of interchange, because it does *not* reveal the work performed by borrowed partners as "part of the total" work performed in a store and, in any event, because the "movement of employees between the stores in [the Districts] is voluntary." *Seattle* at 14-15. There is, therefore, every reason to reach the same conclusion here as in *Mesa I* and *Seattle* notwithstanding the statistics regarding movement among stores in the districts here.

As importantly, as the *Seattle* decision explains, the Employer's focus is flawed, because it does not account for the frequency or duration of borrowed partners in a given store. *Id.* at 14-15. The Employer's expert conceded that his analysis does *not* take into account either the frequency or duration of how often or how long an individual employee worked at one store or another. Tr. 486-87, 489-90. Thus, while the Employer will point out, for example, that from September to January some 70% of partners at the Wabash store were borrowed partners (Chicago Er. Exh 9(a) at 3), that number is misleading, because it does not account for how frequently or how long any such borrowed partners worked in that store. Tr. 490. Indeed, that number (70%) was virtually identical in *Seattle*, but it was nevertheless deemed to be insignificant for purposes of the interchange analysis. *Seattle* at 14, 15. As the *Seattle* decision explained:

Viewing the data in this way treats as equivalent a borrowed partner that works one shift at the [petitioned-for] store . . . and a [petitioned-for] store employee that

works hundreds, perhaps thousands of hours in [the] same period. This comparison is *so distorted* as to undermine the Employer’s arguments, and I find it runs contrary to the Board’s directive to consider temporary interchange not in the abstract, but as a *function of total hours*.

Seattle at 14-15 (emphasis added.) *See also Starbucks*, 371 NLRB No. 71 slip op at 1 (while 54.9% of petitioned-for employees worked at two or more stores, “those number do not reflect how often those employees worked at other locations.”)

In short, the Employer’s argument ignores the critical factor that has controlled and should control the interchange analysis in every Starbucks case – total shifts and hours worked.¹¹ *Id.* Here, in 2021, almost *all* of the hours worked in the Wabash store, the Logan store, and the Woodlawn were worked by *home store* employees. The result here, therefore, must be the same as in all of the prior Starbucks cases.

E. Geographic Separation

Mesa I found that the geographic proximity of the stores did not overcome the single store presumption, noting that the Board has found stores located only two miles apart to be appropriate single-facility units. *Mesa I* at 17 n.22 (citing *Lipman's, A Div. of Dayton-Hudson Corp.*, 227 NLRB 1436 at n.7 (1977)). *See also Cargill, Inc.*, 336 NLRB at 1114 (“East and West facilities are geographically separate, located two miles apart”).

Mesa I also noted that geographic separation is “not determinative” where there are other “persuasive factors supporting the single-facility unit.” *Mesa I* at 17 n.22 (citing *New Britain Transp.*, 330 NRB 397, 398 (1999).) *See also AVI Foodsystems*, 328 NLRB 426, 429 (1999), where Board found appropriate a single-facility unit of cafeteria workers located on the employer’s

¹¹ The employee interchange here is also less than or comparable to the amount of interchange found to be insufficient to rebut the single-store-presumption under Board precedent. *See Cargill, Inc.*, 336 NLRB 1114, 1114 (2001) (“In any event, we would not view 13-14 instances of interchange among 23 employees over an 8-month period as demonstrating substantial interchange sufficient to overcome the single-facility presumption.”).

campus, excluding cafeteria workers at a restaurant only “one-half mile apart” on the same campus, observing that “each operation [was] located in a separate building with a significant degree of autonomy.” *See also Gordon Mills*, 145 NLRB 771 (1963) (finding single-facility unit of production employees appropriate, excluding similar employees located 500 feet away in a separate building, given local autonomy and a lack of interchange and bargaining history).

Similarly, in the *Seattle* decision, the Regional Director noted that the stores in the district were separated “at most by a few miles” but that stores were nevertheless “separated as a practical matter.” *Seattle* at 16.

The same is true here. The Chicago stores are obviously operated within distinct buildings and are geographically separated to a similar degree as in the above-cited cases. The distance between the Woodlawn store and the other stores in District 986 range from 3.6 miles to 10.8 miles with an average distance of 6.14 miles between the Woodlawn store and the other nine stores. The distance between the Logan store and the other stores in District 3113 range from 1 mile to 5.4 miles with an average distance of 2.7 miles between the Logan store and the other ten stores. The distance between the Wabash store and the other stores in District 303 range from .1 miles to 1.5 miles with an average distance of .44 miles between the Wabash store and the other ten stores. (All distances from Google Maps using the addresses in Bd. Exh. 2.)

While these distances are not great, as is to be expected in a densely-populated urban center, they are similar to or larger than the distances between facilities in the cited cases and, in any event, they are overshadowed by the other evidence of store autonomy.¹²

¹² For example, the Board in *AVI Foodsystems* found separate cafeterias *one-half mile* apart to be distinct units, because of local autonomy. 328 NLRB at 429. There, the local manager exercised autonomy in mostly the same ways store managers do here – conducting initial employment interviews; making hiring recommendations; recommending whether to hire additional employees; determining and assigning an appropriate number of cafeteria workers to each work station; determining if overtime was necessary; evaluating employees semiannually and recommending wage increases or other rewards; recommending

F. The absence of bargaining history supports the single-store presumption.

There is no bargaining history at the Chicago stores or at any of the Employer's stores in Districts 3030, 983, or 3113. Such an absence of bargaining history supports the single-store presumption. *See Sav-On Drugs, Inc.*, 138 NLRB at 1034–35; *Lipman's, A Div. of Dayton-Hudson Corp.*, 227 NLRB at 1438; *Renzetti's Mkt., Inc.*, 238 NLRB at 176; *Eschenbach-Boysa Co.*, 268 NLRB 550, 551 (1984); *Hilander Foods*, 348 NLRB at 1202-03.

* * *

Given all of the evidence summarized above (and discussed in the prior *Starbucks* DDE's), the most that can be said is that the Employer has not produced evidence sufficient to overcome the single-store presumption. A single-store unit at each of the Chicago stores is, therefore, necessarily appropriate under Board law.

Respectfully submitted,

Dated: February 24, 2022

/s/ Robert S. Cervone

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promotions, transfers, layoffs, and recalls; scheduling and approving vacations and days off; correcting, approving, and processing employee time cards, and docking tardy employees; resolving employee complaints; and playing a “significant role in the discipline of employees, deciding whether to impose discipline at all and recommending the degree of discipline, from a verbal warning to discharge.” 328 NLRB at 426.

CERTIFICATE OF SERVICE

The undersigned certifies that, on February 24, 2022, he caused a copy of the foregoing Petitioner's Post-Hearing Brief, to be served on the following parties in the following manner:

To the Regional Director of Region 13 via E-File.

To Noah Lipshultz, attorney for the Employer, via email at NLipshultz@littler.com.

/s/ Robert S. Cervone